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Testimony of Senator Jeff Plale on SB 220 **August 2, 2007**

First and foremost, it is important to note that Senate Bill 220 codifies a Wisconsin Supreme Court ruling in July of 2006. Outdoor advertising signs are considered personal property and most municipalities collect personal property tax from sign owners. Most municipalities use the "cost approach", which bases the tax on the cost to purchase or the cost to construct the sign. However, several cities in Wisconsin use the "income approach," which bases assessing value on the *income* derived from the sign. In the Wisconsin Supreme Court case *Adams Outdoor vs. City of Madison*, the court ruled that the "income approach" cannot be used as the exclusive basis for such valuation or assessment for tax purposes. It is also important to note that no other state is the income approach used to assess signs.

Income derived from advertising is an indefinable number and is exempt from taxes in most states. Due to this emerging trend, the "cost approach" method of assessment is being used with increasing frequency.

Many states have warned that income and comparative sales approaches tend to include intangible value and fail to overcome problems caused by analyzing advertising revenues generated by multiple billboards. In short, other methods are inefficient.

To give one example of what another state concluded; in 2002, the California Board of Equalization concluded a comprehensive review of billboard assessment and issued new guidelines stating that the "cost approach" is the easiest and most realistic valuation method. The Board dismissed the "income approach". The Board concluded that the income approach is unfavorable because of the difficulty in isolating the income attributable to the taxable property. Other states which have rejected the cost approach in billboard assessment include New York, Pennsylvania, South Carolina, North Carolina, Georgia, Alabama and Texas.

Thank you for strongly considering this bill.





State of Wisconsin • DEPARTMENT OF REVENUE

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Senate Commerce, Utilities and Rail Hearing, Aug. 2, 2007

SB 220 – Determining Value of Billboards (Sen. Plale)

Description of Current Law and Proposed Change

Under current law, personal property (including an advertising sign) is assessed at its "true cash value." Estimates of true cash value can be derived by using three approaches to value: the sales comparison, income, and cost approaches.

- The sales comparison approach relies on comparing similar properties to the subject property and adjusting them for differences.
- The income approach relies on estimating the net rent that the subject property could generate, then capitalizing the rent by an appropriate rate. A capitalization rate is the annual cash flow from an asset divided by the asset's capital cost; it is used to measure the rate at which an investment will pay for itself in net cash flows. The income approach effectively values property at what it can earn while recognizing the time value of money.
- The cost approach relies on determining either the reproduction or replacement cost of the improvements, subtracting depreciation, and adding the value of the land.

The Wisconsin Property Assessment Manual (WPAM) instructs appraisers to consider all available data and the three approaches to value, and then to identify the most appropriate approach considering the specific property. According to the WPAM, appraisers typically use the sales comparison approach in markets where adequate sales exist. They typically use the income approach for income-producing properties when an active rental market exists. They use the cost approach in cases of new or special purpose structures or where limited sales or rental data activity exists.

Effective for property tax assessments as of January 1, 2007, the bill would require the value of an outdoor off-premises advertising sign to be determined with the cost method of valuation. Specifically, the assessed value of off-premises advertising signs would be determined by subtracting depreciation from the cost of reproducing the sign. The value could not include the value of permits issued, leasehold interests or other intangibles. The bill defines an off-premises sign as a sign that does not advertise the business or activity that occurs on the site where the sign is located.

Fairness/Tax Equity

- Off-premises advertising signs would be valued differently under the bill than other commercial property, including advertising signs that are located on the premises of a business. On-premises signs and other commercial property may be valued according to the cost, income or sales approach.

- Valuation standards require consideration of three methods of valuation to reflect the differences in particular aspects of the property. As with other commercial property, the location of the property can have a significant effect on its value. For example, a billboard on a busy highway in an urban area would produce more advertising value, and would therefore be worth more, than the same billboard on a small country road, yet this bill would value them the same.
- It could be argued that because the cost method of valuation is the most commonly used method for off-premises signs that it is fair to mandate it for all signs. However, using only the cost valuation method may not reflect the true cash value of the advertising signs.
- The bill may lead to other efforts to specify only one assessment methodology.

Impact on Economic Development

- None.

Administrative Impact/Fiscal Effect

- The Department does not have information to reasonably estimate the fiscal effect of requiring a cost method of depreciation for off-premises advertising signs. To the degree that the bill would reduce the taxable value of off-premises advertising signs, however, property taxes would be shifted to remaining taxable value. State forestry taxes would also decrease as a result of any taxable value reductions under the bill. For each \$1,000 reduction in equalized value under the bill, state forestry tax collections would decrease by approximately \$0.17 in 2008 and beyond.

The bill would require revisions to the Wisconsin Property Assessment Manual. The Department's costs under the bill can be absorbed by existing budget authority.

- The bill may create equal protection or uniformity clause issues because it requires valuation using the cost approach only for "off-premises billboards." Other billboards may be valued using costs, sales, and income approaches.
- The bill provides an effective date of January 1, 2007. Most valuations for the 2007 assessment year are already finalized and municipalities are in the process of hearing appeals at the board of review. The January 1, 2007, effective date would not allow the Department sufficient time to inform assessors of the law change, train assessors, and update the Wisconsin Property Assessment Manual.

Prepared by: Pam Walgren (608) 266-7817

July 31, 2007

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August 2, 2007

MEMORANDUM

TO: Members of the Senate Committee on Commerce, Utilities and Rail

FROM: Janet Swandby and Kathi Kilgore, Lobbyists

RE: Support for Senate Bill 220

1. Almost all businesses in Wisconsin are assessed and pay personal property taxes to the local municipality for the equipment and furniture used in their business. Historically, municipalities have used the "cost approach" or "depreciated cost basis" for assessing personal property.
2. There are three basic, accepted methods of assessing property: The cost approach is based on the cost to purchase or construct the item. The comparative sales approach is based on data regarding recent, comparable sales. The income approach is based on the income derived from the item.
3. In the past few years, only two municipalities (Madison and LaCrosse) have assessed signs using the "income approach". These municipalities requested information from the businesses on the income generated from the signs and based the assessment on that income. The income generated from the signs is, of course, far greater than the depreciated cost of the signs structures.
4. Adams Outdoor Advertising sued the City of Madison challenging the use of the "income approach". On July 13, 2006, the Wisconsin Supreme Court issued a decision ruling that the income approach cannot be used as the exclusive basis for a valuation or assessment for tax purposes. This was a "win" for Adams Outdoor, but the City of Madison still has not revised how it assesses the signs for personal property tax purposes.

Senate Bill 220 would codify the Supreme Court ruling by requiring municipalities to use the depreciated cost approach to assess signs. The bill also specifically prohibits municipalities from including the permit or other intangibles in their assessment of the signs.

The Outdoor Advertising Association of Wisconsin (OAAW) asks for your support of SB 220. If you have questions, please contact Janet Swandby or Kathi Kilgore at 608.286.0764 or at Swandby@swandby.com or Kilgore@swandby.com.



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ADAMS OUTDOOR ADVERTISING OF MADISON

TESTIMONY TO SENATE COMMITTEE ON COMMERCE, UTILITIES AND RAIL

SB 220

Chris Eigenberger & Jason Saari
August 2, 2007

Good morning, thank you to the committee for taking the time to have a hearing on this issue. It is of extreme importance to our company and also the outdoor advertising industry in Wisconsin.

My name is Jason Saari, and I am the Real Estate Manager for Adams Outdoor Advertising of Madison, and also the Vice President of the Outdoor Advertising Association of Wisconsin.

I began working in the Outdoor Advertising Industry in February 1996, and have worked for ABC Outdoor Advertising, Eller Media Company, and Clear Channel Outdoor based in SE Wisconsin.

Since 2005 I have been the Real Estate Manager for Adams Outdoor Advertising of Madison.

My responsibilities include site lease renewals, easement and property acquisitions, new site development, and public affairs.

With me is Chris Eigenberger, the General Manager of Adams of Madison. Chris has been the GM for the past six years, and has over 24 years of media experience having worked for Adams, Charter Communications, WMTV and WSAW TV.

As I am sure you may be aware, this issue relates to a lengthy court proceeding that has been ongoing since 2001 between Adams Outdoor Advertising and the City of Madison.

Since 1994, the City of Madison has been assessing our signs using the income approach. Historically, the cost less-depreciation approach had been used. When Chris Eigenberger became GM for Adams in 2002, to his surprise, he realized Madison and La Crosse were the only two cities in the United States that taxed signs exclusively using the income approach. Based on that extraordinary fact, and the fact that outdoor advertising signs have traditionally been valued for tax purposes using the cost-less depreciation approach, Adams decided to challenge the assessment.

In July of 2006, this matter was subject to a 5-2 WI SUPREME COURT decision in favor of Adams. In that decision, the SUPREME COURT heavily criticized the exclusive use of the income approach to tax outdoor advertising signs, and ordered a reassessment based on their decision.

At the time the decision was handed down, we expected this matter to be resolved and were very happy about the fact that we could finally move on with our business. However, since that time, the City of Madison Assessor has chosen to ignore the direction given by the Supreme Court in his reassessment and continues to use the income approach.

I have brought along several copies of the Supreme Court's 5-2 majority decision and would like to quote from it. Page twenty three of the decision states:

"We consider the City assessor's failure to consider collectively all the factors, especially cost-less depreciation, that reasonably affected the value of Adams' billboards a failure to follow the Property Assessment Manual and the rulings of this court.

I believe the WI Supreme Court's comments regarding the exclusive use of the income approach sums up the need for this legislation. The fact that assessors are continuing to ignore the cost-less depreciation method flies in the face of the court's decision, and also the Property Assessment Manual.

I also would like to point out that there are over 51,000 municipalities in the United States. We are aware of only four that currently tax billboards this way. They are Madison, La Crosse, Fitchburg and Sun Prairie. Madison was the first, and the other three followed. There are only two signs located in Fitchburg and Three in Sun Prairie, so we have not pursued litigation in those communities. No other municipality in the United States has chosen to take this approach because they know it is the wrong way to assess billboards. The WI Supreme Court has verified that

with their decision.

Chris Eigenberger would now like to share his experience and comments related to this issue. Chris has been dealing with this issue for the last six years and is most familiar with it.

CHRIS: I would like to read some more excerpts from the SUPREME COURT DECISION:

- Paragraph 55: “We think it extraordinary that the assessor rejected out of hand such factors as cost, depreciation, replacement value, and insurance carried”. The Madison Assessor, Mr. Kurth continues to reject these factors in his assessments since the decision, and our costly litigation continues. We have endured 5+ years litigating this issue, and there continues to be no end. We have spent well over \$300,000 in litigation, and unless this legislation is passed, it will continue and spread to several other communities, and quite possibly several other types of personal property that generate income.
- Paragraph 3(b): “When the Madison City Assessor acknowledged that he considered but rejected all other approaches and factors, his assessment contravened long standing assessment principles, as well as the prevailing practice for assessing billboards throughout

Wisconsin and the United States". I think it was mentioned earlier, but I feel it's important to remind everyone that there are only FOUR communities in the U.S. that tax billboards this way. All four are in Wisconsin. This tells me that we have a problem in Wisconsin that needs to be fixed.

- Paragraph 3 (c): "The City erred by including the value of billboard permits in the assessment of Adams' billboards. Billboard permits are not tangible personal property". The Madison assessor continues to include the value of our billboard permits in his assessments since the decision.
- The decision clarifies it even further in Paragraph 89: "an appraisal for personal property tax assessment purposes includes only the value of personal property, and therefore excludes the value of the leasehold and billboard permit".

It is our belief that if you follow the Court's decision and take out the leasehold interest and the billboard permit, the assessment must break down to the cost less depreciation approach anyway. The assessor has stated that fair market value is the price that a willing buyer and willing seller agree to. I can tell you that I certainly wouldn't pay any more than the cost of the actual structure itself if there are no lease and no permits associated with it. Without those two things it is impossible for me to put that sign in the ground and generate income.

Since the WI Supreme Court decision came out, our assessments continue to be contrary to the direction given by the Court. In fact, if you can believe it, the court ordered re-assessments have come in essentially unchanged and we are currently before the City of Madison Board of Review to protest the assessment. Does this make sense? This is exactly why we need this legislation.

We need it to end costly litigation, and also avoid future litigation regarding this matter in other Wisconsin communities. Just think for a minute about all of the personal property that generates income:

- Shelves in a retail store
- A computer used to sell shoes online
- A pizza oven at a restaurant
- A fish tank at a bait shop

The possibilities are endless. By passing this legislation, you will set the record straight and help businesses in Wisconsin.

We would be happy to answer any questions you may have. Thank you for your time.

Senate Bill 220 Testimony

Mike Kurth

Representing the Wisconsin Association of Assessing Officers
Chair, Ad Hoc Billboards Committee

Thank you for allowing me to speak this morning. I appear in opposition to Senate Bill 220. This bill mandates the use of the cost less depreciation approach when assessing off-premise advertising signs using a recent Supreme Court decision as support.

Mandating the assessment practices of one specific type of property for a special interest group is dangerous territory and may violate the uniformity clause of the state constitution. This could also open the door for similar requests from other property or property types. Currently all property except agricultural property is assessed at fair market value, considering the highest and best use and using the three approaches to value, Sales Comparison, Cost and Income as applicable. Assessment law and professionally accepted appraisal practices are based on these principles.

If the recent Supreme Court decision actually mandated the use of the cost less depreciation approach, this law change would not be needed. In actuality, this decision did not mandate an approach to use and ordered a reassessment of the property in question. The final decision of the court is still pending. The Court has determine though, that the "sign permit" is an assessable real property interest.

The court stated that a per se rule dictating how billboards should be valued is an administrative or legislative decision. In their decision though, the court cited *Wahl v. H.W. & S.M Tullgren Inc* (222 Wis 306, 310, 267 N.W. 278 (1936)), "*Implicit in Wahl is the court's concern that reliance upon a single factor in determining fair market value may result in skewed appraisals due to aberrant market conditions*". The court also stated, "*The lesson from Wahl and its progeny is that an assessor must consider all factors relevant to fair market value to ensure that an assessment is not skewed*". The Wisconsin Property Assessment Manual requires the use of all valuation approaches as applicable and reconciling to a fair market value.

Sign companies have used the sales comparison approach and income approach to determine fair market value for other situations yet they want to limit the valuation to cost less depreciation for assessment purposes. They would like to reap the benefits of the other approaches but they do not want to pay their fair share of the property tax using these same approaches.

Fair market value is fair market value based on the definition of the property to be appraised or assessed and the valuation method should not be mandated. I urge you to vote against Senate Bill 220 for fairness and uniformity in the assessment process.

Thank you